



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mikefield Properties Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties raised no issues with the receipt of the other Party’s evidence. The Witness gave testimony under oath.

Preliminary Matter

The Tenant’s application sets out the claim for the Landlord’s compliance in relation to a breach of the Tenant’s right to quiet enjoyment. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for compliance is not related to the matter of whether the tenancy will end, I dismiss the claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order for the Landlord's compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy started on April 1, 2021. Rent of \$950.00 is payable on the 30th or 31st day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The Landlord gave the Tenant a one month notice to end tenancy for cause dated September 13, 2021 (the "Notice"). The reasons for the Notice are that

- The tenant or person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord states that the Tenant has breached a material term of the tenancy agreement by making noise. The Landlord provides three letters dated July 16, August 5 and September 13, 2021, as breach letters.

The Landlord states that the Tenant has put the Landlord's property at significant risk by having constant visitors. On one occasion a person was seen throwing rocks at the Tenant's unit. The Landlord has no evidence that this person was a guest of the Tenant. The Tenant states that the Landlord's photo of a person allowing another person into the unit is not a photo of the Tenant and that the Tenant does not know the person being allowed into the unit.

The Landlord states that the Tenant has been regularly disturbing the lower tenant with noise. The Landlord provides a log from this lower tenant of the dates, times and

description of the noises complained of and that started on September 2, 2021. The Landlord states that no other tenant has complained and there have been no complaints of other tenants in the building making noise. The Landlord states that the floor between the units has a concrete layer and knows this having seen the renovations being made to the flooring. The Landlord states that there has also been noise from the coming and going of the Tenant's guests.

The lower tenant (the "Witness") states that between September 2 to 13, 2021 there were 7 or 9 occurrences of noise coming in short bursts with intermittent loud banging and running around. The Witness states that once or twice in this period the Witness's afternoon nap was interrupted by the noise. The Witness confirms that no work has been missed as a result with the noise however the Witness has been exhausted once or twice. The Witness states that at first the noise was only a disruption but that since September 13, 2021, the noise has escalated. The Witness states that the Tenant has a tv in their bedroom that goes until 4:00 a.m. The Witness states that in their 8 years of tenancy they have never heard this noise before.

The Tenant states that they work 12-hour days three times a week with variable night shifts and that they are not doing anything outside of normal living activity in the unit. The Tenant states that on occasion a cleaning mop has dropped on the floor, that some furniture was moved on another occasion and that the only running that may have occurred could have been when the Tenant was running for a date. The Tenant states that they sometimes and briefly wear footwear in the unit, that the Tenant is a large person and did on one occasion slip and fall. The Tenant states that the television has been in the bedroom since the beginning of the tenancy and that the Tenant sometimes stays up late with the television on. The Tenant states however that the television cannot be heard outside the bedroom in any other part of the unit. The Tenant states that the Tenant hears a lot of noise in the building and has been woken up at 5:00 by the slamming of doors that rattle their unit. The Tenant states that they do not believe the slamming occurs purposely and that there is insufficient sound proofing in the

building. The Tenant states that the Landlord's description of the renovations to the flooring sound like the Landlord saw only a self-leveling layer for under the flooring. The Tenant states that they have experience in this area and this layer is not soundproofing.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy where, inter alia,

- the tenant or a person permitted on the residential property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or
 - put the landlord's property at significant risk;
- the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Guideline #8 provides that to end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The Landlord's evidence of the first breach letter refers to occupants and does not provide any time for the remedy of this breach. As the Landlord is not seeking to end the tenancy for occupancy issues, I find that this is not a relevant letter. The second letter does not set out that a material term was breached and is headed "warning". As this letter does not set out that a material term was breached, I find that this is not a breach letter as required by policy. As the third letter sets out a breach warning but provides no time for its remedy, I find that this is not a breach letter as required by

policy. As the Landlord has not provided any evidence of a duly completed breach letter, I find that the Notice is not valid for a breach of a material term.

As the Landlord has not provided sufficient evidence of any disturbance by a guest of the Tenant and has not provided evidence that the persons entering the unit or throwing rocks are guests of the Tenant, I find that the Landlord has not substantiated that the Notice is valid for this reason. The Landlord has no direct or supporting evidence that a guest of the Tenant caused any risk to the property.

Although the Witness log sets out several and repeated instances of noise, these noises are described as mostly thumping or stomping. This log also indicates that the noise was in primarily short bursts and during the day or early evenings. The Landlord has not provided any evidence of noise extending into any adjoining tenant units. Given the Witness's own evidence, I consider that there is no evidence of any significant interference with the Witness's ability to enjoy their own unit. While these noises may be disturbing, given the Tenant's undisputed evidence of body size and normal living activity that I consider holds a ring of truth, I consider that such noise is not an unreasonable disturbance in the circumstances. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. As none of the reasons for the Notice have been found to be valid, I find that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with this claim I find that the Tenant is also entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 10, 2022

Residential Tenancy Branch